

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHERYL NYKIEL, Individually and as
ADMINISTRATRIX of the ESTATE of
GREGORY T. NYKIEL, Deceased,

CIVIL DIVISION

Plaintiff,

No.: 2:08-cv-00813

vs.

BOROUGH OF SHARPSBURG, et al

Defendants.

**PLAINTIFF'S STIPULATION TO DISMISS BRIAN KELLY
PURSUANT TO F.R.C.P. 41(a)(1)(A)(I)**

Plaintiff Cheryl Nykiel, Individually and as Administratrix of the Estate of Gregory T. Nykiel, by and through her attorneys, Peter D. Friday, Esquire, Friday Porta Cox & Ward LLC and Thomas J. McClain, Esquire, set forth the following Stipulation to Dismiss Defendant Brian Kelly:

1. This action was commenced by the filing of a complaint directed against, *inter alia*, Shaler Township, Shaler Township Police Department and Shaler Township Police Officer Brian Kelly on June 12, 2008.

2. Shaler Township, Shaler Township Police Department and Officer Kelly filed an Answer and Affirmative Defenses to Plaintiff's original Complaint denying Kelly's involvement in any of the events alleged therein.

3. Thereafter, said Defendants provided Plaintiff with voluntary disclosures pursuant to Rule 26 which identified the Shaler Township Police Officers who had involvement in the events described in the Complaint. Brian Kelly was not among the

officers so identified, nor did that information even suggest that he was on duty at the time and date alleged.

4. Plaintiff has since filed an Amended Complaint directed to Brian Kelly and four additional police officers.

5. Brian Kelly has not yet filed an answer to the Amended Complaint, nor a motion pursuant to Rule 12.

6. Based upon the information supplied through Defendants' voluntary disclosures which reveal Kelly's non-involvement, and which further reveal the identities of the Shaler Officers who had any involvement in the events relating to Plaintiff's claims, Plaintiff agrees to dismiss Kelly from this action.

7. It is further stipulated and agreed that in the unlikely event that discovery reveals facts or information to suggest a basis for Kelly's involvement in said events, and Plaintiff thereby seeks to rejoin Kelly as a defendant herein, the parties hereto stipulate and agree that the statute of limitations will not be raised as a defense to such joinder.

So stipulated:

On behalf of Plaintiff:

/s/ Peter D. Friday
Peter D. Friday, Esquire
Pa I.D. # 48746
pfriday@fridaylaw.com

/s/ Thomas J. McClain
Thomas J. McClain, Esquire
Pa I.D.# 38566
thomasmcclain@acba.org

On behalf of Defendant Brian Kelly

/s/ Suzanne B. Merrick
Suzanne B. Merrick, Esquire
smerrick@tthlaw.com

AND NOW, THIS 18th DAY OF
Dec, IT IS HEREBY
~~ORDERED~~ THAT THE WITHIN
~~NOTION~~ IS GRANTED.

G L Lancaster
GARY L. LANCASTER,
UNITED STATES DISTRICT JUDGE